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VIA ELECTRONIC CASE FILING

Hon. Katherine B. Forrest
United States Courthouse
500 Pearl Street, 15A
New York, NY 10007

Re: Hosseinzadeh v. Klein et al. – 16-cv-3081 (KBF)

Dear Judge Forrest:

We are attorneys for plaintiff Matt Hosseinzadeh (“**Plaintiff**”) in the above-referenced matter. We are writing pursuant to the Court’s Individual Rule 1(B) in application for (i) the right to file a sur-reply to Defendants’ Motion for Summary Judgement limited to the issue of Plaintiff’s Claim for Defamation; and (ii) admission of the below-described video as evidence.

On February 27, 2017, the day on which Plaintiff’s response to Defendants’ Motion for Summary Judgement (Dkt. 82) was due, defendants Ethan Klein and Hila Klein (the “**Defendants**”) published a new video titled “We’re Still Being Sued” to their YouTube channel, H3H3Production (the “**New Video**”).¹ The New Video purports to discuss developments in this matter, complains about the approximately \$50,000 legal fee that the Defendants paid to their attorneys for the month of December, and concludes that the American justice system is “criminal” (New Video at 3:50) with Defendants painting themselves as David in a David vs. Goliath scenario stating, “it’s like those with money in the legal system have the ability to destroy, and bully, and defeat people on the grounds that [they] have more money.” (New Video at 4:30.)

As of today, the New Video has received 3,034,165 views and, as expected, Plaintiff has once more received a torrent of hate mail and threats calling him a litigious bully among other less polite things. As the Court knows, the basis of Plaintiff’s defamation claim against the Defendants is that the Defendants’ previous Defamatory Video (as defined in the Second Amended Complaint) misrepresented the facts leading up to this lawsuit in a way that was tailored to paint Plaintiff as a litigious bully. The New Video continues this false storyline by painting Plaintiff as a rich bully using his money to undermine our legal system—this despite the facts that (i) Defendants have noted in their filings that Plaintiff earns his living by working as a part time pizza delivery driver (Dkt. 94, Defendants’ Objections at 2); and (ii) Plaintiff has engaged a boutique firm in this matter,

¹ “We’re Still Being Sued,” H3H3Productions, <https://www.youtube.com/watch?v=m40bWgWH8Ro&t=236s>.

consisting of two litigators, against the Defendants' attorneys at one of the largest, most expensive firms in the country which Defendants support out of the \$150,000 fund that they have raised from their fans (which Defendants have apparently nearly exhausted).

The New Video, which was published less than two months from the Court-scheduled jury trial date in this matter, constitutes significantly prejudicial trial publicity by not only threatening to prejudice the potential jury pool—having already been viewed by over three million people—but also continuing to support Defendants' false narrative of this matter which lies at the heart of Plaintiff's defamation claim. The New Video further highlight Defendants' ability to manipulate the narrative of this matter and rally popular support against Plaintiff—which underscores their initial view of Plaintiff as insignificant and is relevant to Plaintiff's claim for knowing and willful infringement. To balance this prejudicial inequity that Plaintiff now faces, Plaintiff respectfully requests the following relief:

- (i) That the Court grant Plaintiff leave to submit a sur-reply to Defendants' Motion for Summary Judgement limiting his argument to the issue of Plaintiff's claim for defamation; and
- (ii) That the Court allows the submission of the New Video as evidence in the pending motions as well as any subsequent trial in this matter.

Respectfully,
/s/Tim Bukher
Tim Bukher

cc. Michael Feldberg (via ECF); Jeffrey Kravitz (via ECF); Rom Bar-Nissim (via ECF)